



# **The Surface Transportation Board and the Nation's Railroads**

STB Commissioner Francis P. Mulvey

Pacific Northwest Association of Rail Shippers

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# Overview of the STB



# The Railroads and the Surface Transportation Board

- Created by the ICC Termination Act of 1995
- Successor agency to the ICC—child of deregulation
- Residual Economic Regulation of the Railroads
- Reduced scope of regulatory activity--*many rail movements deemed competitive*
- Smaller staff



# STB Mission

- Exclusive authority to approve of rail mergers
- Review rail rates and practices to ensure they are reasonable and not discriminatory
- Approval, including environmental review, of
  - (i) construction of any new rail line or
  - (ii) abandonment of existing lines
- Motor carrier collective ratemaking activities
- Rates for non-contiguous domestic water trade
- Rates for pipelines not carrying energy products



# STB Merger Authority

- Urge to merge 1900-1970
- Mergers in post-Staggers era
- STB merger policy in the 1990s
- Merger moratorium and new guidelines
- Mergers and downstream impacts
- STB categories of merger transactions  
(major, significant, and minor)



# STB Responsibilities over Rates and Service

- Oversee and monitor rail practices nationally
- Enforce common carrier obligation
- Ensure that rates charged captive customers are reasonable
- Assist railroads to earn adequate revenues
- Estimate railroads' cost of capital



# Rate Case Resolution

- Determination of market dominance (180% R/VC) and absence of competitive alternatives
- Stand Alone Cost Test—*Fact based approach rooted in economic reasoning and approved by courts*
- No substitute for preparing a strong case with solid evidence
- Strive for a balance between railroads need to earn adequate returns and shippers needs for fair and reasonable rates



# Alternative Approaches

- SAC approach has been criticized as artificial and overly complex
- SAC approach is very costly and time consuming
- Only feasible for large shippers—no small shipper cases have been filed
- Is it time to look for alternative approaches?
  - Recent decisions suggest openness to proposed rulemaking on SAC changes
  - March 24<sup>th</sup> hearing on SAC process





# Environmental Review

- Approval of new construction
  - DM&E
  - Yucca Mountain
- Abandonment cases
- Offers of Financial Assistance (OFAs)
- Rails to Trails



# Recent Changes in STB Procedures

- Greater openness, more public meetings
- Increased reliance on mediation and technical conferences
- Expedited discovery procedures
- Greater shipper and carrier outreach



STB --  
2004 in Review  
2005 in Preview



# 2004 in Review – Overall

- Board at full strength with confirmation of two new members
- Agency worked off a significant backlog in last half of 2004
- Held 17 Public meetings on significant issues:
  - Six Voting Conferences
  - Seven Oral Arguments
  - Four Hearings



## 2004 in Review – Coal Maximum Rate Cases

- Decisions on three coal rate cases
- Decisions on five petitions for reconsideration of already-decided maximum rate case decisions
- Oral arguments in two rate cases
- Only one new coal maximum rate case filed
- Conducted site visit to Powder River Basin



## 2004 in Review – Service Issues

- Board carefully monitored rail trends and performance metrics
- Urged open communication between railroads and shippers
  - San Francisco, Atlanta, Kansas City and Houston Service fora
  - Worked to resolve many smaller service complaints
- Asked railroads to submit their fall peak plans
- Worked with railroads and shippers on service issues



# Freight Rail Capacity Issues



# Insufficient Railroad Capacity

- Current and future service issues often demand and capacity driven
- Most commodities are deregulated and/or modally competitive
- Interstate Commerce Act laws and doctrine look at reasonableness of rates and service
- Customers want fairness
- What can the STB do?





# Capacity Constraints – Short-term Causes

- Increased rail demand and tightness in rail capacity
  - ✓ Expanding economy increased imports
  - ✓ Large grain harvests in 2003 and 2004
  - ✓ Shortage of crew and equipment
  - ✓ Insufficient capital expenditures
- Trucking capacity is also tight
  - ✓ Increased fuel prices
  - ✓ Driver shortages
  - ✓ High insurance costs
  - ✓ Uncertainty over impact of hours of service rules<sup>17</sup>



# Capacity Constraints – Longer Term Factors

- Future demand for freight movement predicted to increase 60% to 70% or more
- Challenge for private companies to meet that demand
- Constraints on capital investment
  - ✓ Railroads inability to achieve revenue adequacy
  - ✓ Demands of investors and Wall Street
  - ✓ Tendency to bid contract rates down to long run marginal costs



# Public Investment in Rail Infrastructure?

- Railroad ROI's inadequate—not earning cost of capital
- Revenue constraints and long term contracts
- Railroad Trust Fund concept - Class I opposition
- Public Private Partnerships (PPPs) –
  - CREATE
  - Alameda Corridor
- Short Lines and 286,000-pound cars
- Investment Tax Credits for Short Lines
- Proposed Elimination of RRIF Program



# Railroad Cost of Capital and ROI

Sources: Annual R-1 Reports and AAR

	Cost Of Capital	BNSF	CSXT	NS	UP	KCS	SOO	GT	IC
1996	11.9%	8.6%	8.9%	13.0%	9.3%	7.2%	23.5%	0.0%	15.2%
1997	11.8%	8.4%	9.8%	13.1%	5.2%	3.6%	12.3%	5.2%	15.8%
1998	10.7%	9.7%	8.1%	10.5%	2.9%	9.1%	4.9%	3.0%	13.6%
1999	10.8%	9.5%	3.8%	5.2%	6.8%	6.4%	2.5%	25.4%	10.0%
2000	11.0%	8.8%	3.6%	5.5%	6.9%	6.3%	5.6%	5.9%	5.9%
2001	10.2%	7.1%	4.6%	8.3%	7.6%	7.0%	5.9%	4.9%	4.9%
2002	9.8%	6.4%	5.2%	9.1%	8.6%	6.5%	5.7%	3.1%	3.1%
2003	9.4%	6.2%	4.0%	9.1%	7.3%	3.7%	.01%	4.5%	4.5%



# STB – 2005 Priorities

- Progress on small rate cases
- Improved customer service from carriers
- Examination of capacity constraints
- Amtrak Directed Service Mandate



# Rail Consumer Assistance Program

- Facilitates informal solutions to disputes with RR's
- Brings issues to RR's attention rapidly
- Solves Problems without Litigation
- Promotes Rail Service Improvements
- 120 Rail Consumer complaints handled in 2004;  
over 420 handled since program began in 2000

# STB – 2005 Priorities

- Focus on 25<sup>th</sup> Anniversary of Staggers Act and 10<sup>th</sup> Anniversary of the creation of the STB
- Proposed TRB study of railroads and regulation in the 21<sup>st</sup> Century

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# Rail Consumer Assistance Program

Three ways to get help:

- Telephone call – **Toll Free (866) 254-1792**
- Written statement of problem
  - **Email [railconsumer@stb.dot.gov](mailto:railconsumer@stb.dot.gov)**
  - **Fax (202) 565-9011**
- Web Form at  
**<http://www.stb.dot.gov/railconsumer.nsf/feedback?OpenForm>**

